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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES

18 WILLIAM TAYLOR,
19 Plaintiff,

20 v.

21 CITY OF BURBANK and
22 DOES 1 through 100, inclusive,
23 Defendants.

Case No. BC 422252
Assigned to: Hon John L. Segal, Dept. 50

**DEFENDANT CITY OF BURBANK'S
OBJECTION TO PLAINTIFF'S
PROPOSED JUDGMENT**

Trial Date: March 5, 2012
Action Filed: Sept. 22, 2009

1 Defendant City of Burbank hereby objects and moves to strike from the "[PROPOSED]
2 JUDGMENT ON GENERAL VERDICT" ("Proposed Judgment") submitted by plaintiff the
3 following provision as follows:

4 "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
5 plaintiff William Taylor be granted the following injunctive relief pursuant to
6 California Government Code § 12940:
7 _____
8 _____
9 _____
10 _____"

11 [See Proposed Judgment, p. 3:8-15.]

12 The inclusion of any language, much less an award, for injunctive relief should be stricken
13 from the judgment. Plaintiff's pleadings do not include any plea for injunctive relief, and any
14 request for such relief has never been tried. Moreover, there is no place for injunctive relief in
15 this case.

16 The only form of injunctive relief that might have been requested would have been
17 plaintiff's reinstatement. FEHA provides for reinstatement as a remedy, but it may only be
18 coupled with back pay. *Gov. Code* § 12970(a)(1). Front pay is available but only to make an
19 employee whole for what he would have earned from a job he no longer has. *See also Cloud v.*
20 *Casey* (1999) 76 Cal.App.4th 895, 910 (back pay and front pay should be calculated to make the
21 employee whole for amount would have made, less earnings in mitigation). Plaintiff requested
22 and the jury awarded front pay in its damages award. Reinstatement would thus be inconsistent
23 with the jury's award. Therefore, it would be improper for plaintiff to seek reinstatement or any
24 other unpleaded injunctive relief in his proposed judgment on the jury verdict.

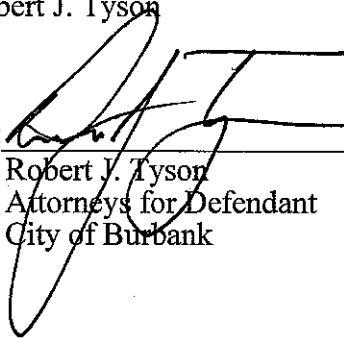
25 Moreover, plaintiff elected his remedies—between front pay and any injunctive request
26 for reinstatement—when he sought future lost income (front pay) through his Complaint, First
27 Amended Complaint, economist's testimony at trial, closing argument at trial, and by securing a
28 jury award of front pay. *Frazier v. Metropolitan Life Ins. Co.* (1985) 169 Cal.App.3d 90, 101

1 (plaintiff entitled to pursue alternative remedies but only until one of those remedies is vindicated
2 by judgment); *Young v. Libbey-Owens Ford Co.* (1985) 168 Cal.App.3d 1037, 1043, n. 5
3 (pursuance of remedy to a favorable judgment means an election of remedies has occurred). An
4 “employer should not be subjected to inconsistent remedial orders.” *City & County of San*
5 *Francisco v. Fair Employment and Housing Commission* (1987) 191 Cal.App.3d 976, 992-994
6 (holding state court actions in abeyance where potential for inconsistent relief on employment
7 discrimination issues already subject to federal judgment). Plaintiff’s consistent election of
8 monetary damages rather than injunctive relief continues in his proposed judgment. He cannot
9 recover both damages for future lost income he would have earned from his terminated City
10 employment and seek injunctive relief in the form of a court order reinstating him to that same
11 employment.

12 As such, for all of the foregoing reasons, the Court should sustain the objection and strike
13 the provision for unstated injunctive relief from the Proposed Judgment.

14 Dated: March 29, 2012

BURKE, WILLIAMS & SORENSEN, LLP
Ronald F. Frank
Robert J. Tyson

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16
17
18 By: 
19 Robert J. Tyson
20 Attorneys for Defendant
21 City of Burbank
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1 **PROOF OF SERVICE BY MAIL**

2 I am a citizen of the United States and employed in Los Angeles County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. I am readily
5 familiar with this firm's practice for collection and processing of correspondence for mailing with
6 the United States Postal Service. On March 29, 2012, I placed with this firm at the above address
7 for deposit with the United States Postal Service a true and correct copy of the within
8 document(s):

9 **DEFENDANT CITY OF BURBANK'S OBJECTION TO PLAINTIFF'S**
10 **PROPOSED JUDGMENT**

11 in a sealed envelope, postage fully paid, addressed as follows:

12
13 Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
14 9100 Wilshire Blvd., Suite 345E
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20 Following ordinary business practices, the envelope was sealed and placed for collection
21 and mailing on this date, and would, in the ordinary course of business, be deposited with the
22 United States Postal Service on this date.

23 I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct.

25 Executed on March 29, 2012, at Los Angeles, California.

26
27 
28 _____

Agnes D. Tualla